

BRAE CORPORATION

RECORDATION NO. 10800 Filed 1425
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ORIGINAL
INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 6th. day of ... March, 1979,
between the BRAE CORPORATION, a California corporation, Three Embarcadero Center, San Fran-
cisco, California 94111 ("BRAE"), as Lessor, and Moscow, Camden and San Augustine.
Railroad, a Texas, corporation, Camden, Texas 75934,
(address of Lessee)

("Lessee"), as Lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until fifteen (15) years (the "initial lease term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule on which such Car is described.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all

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Scott B. White
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applicable governmental regulatory specifications, and this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the lease hereunder with respect thereto shall commence upon acceptance by BRAE from the manufacturer, Lessee agrees to pay to BRAE the rent for such Car set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. * Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6A hereof) of all Cars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the initial lease term ~~shall terminate fifteen (15) years from the date on which the final Car of the last month group of Cars was delivered, as provided in Section 3A hereof.~~ ^{**}

4. Railroad Markings and Record Keeping

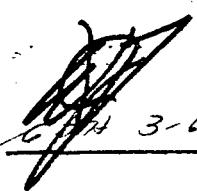
A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

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* To the extent permitted by law,

** For such schedule


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C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. BRAE shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during regular BRAE business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee ~~shall~~ *** perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish BRAE concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery

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* visually

** from such inspection

*** may, at BRAE's expense,

+ at BRAE's expense

++ or by maintaining a self insurance program satisfactory to BRAE.

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or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, ~~except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and handling charges~~ BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. ~~BRAE and~~ Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. ~~BRAE shall review all applicable tax returns prior to filing.~~

6. Lease Rental

A. Lessee agrees, subject to Section 6D hereof, to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are herein-after collectively referred to as "payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than ~~90~~^{92.5} per cent. For the purpose of determining utilization, "Car Day" shall mean one day on which one Car is on lease hereunder, commencing on the initial loading of such Car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Days for which payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Days during such period. In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event Utilization ~~exceeds 90~~^{exceeds 92.5} per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental ~~plus an amount equal to one-half of the payments received in excess of the BRAE Base Rental.~~ For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is ~~90~~^{92.5} per cent and the denominator of which is the Utilization for such calendar year. ~~(The above determination of BRAE Base Rental insures that Lessee will, if Utilization is greater than 90 per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)~~

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A hereof, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments, but only from and out of the monies received by Lessee pursuant to Subsection 6A(ii) hereof.

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Care Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the ~~end~~^{end} of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE ~~may~~^{may}, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly

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* except ad valorem/personal property taxes,

** 92.5%

*** for the XM Cars

+ In addition BRAE will receive all payments made by other railroads for use or handling of the ~~Cars~~ XP Cars.

++ receive

+++ except as more specifically provided in this provision

@ and Lessee

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basis rather than a yearly basis the amount due ⁺ pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid ⁺⁺ promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

⁺⁺⁺ C. [^] If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.*

D. If the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to less than three months without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this Section 6, BRAE may, at its election which shall be effective promptly upon written notice to Lessee, either (i) terminate this Agreement, or (ii) keep this Agreement in effect except that it shall be modified so that thereafter the rent which Lessee shall pay to BRAE for the use of the Cars, notwithstanding anything contained in Section 6A hereof to the contrary, shall be 100% of the payments, of whatever character, made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to, mileage charges, straight car hire payments and incentive car hire payments.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE ^{***} in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars

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* Lessee may, however, make such payments as necessary to bring the Utilization up to 87.5% prior to such termination.

** with the understanding, however, that the XP Cars will be assigned to shippers not on the railroad. ⁺⁺ within 30 days of such calculation and documented to Lessee

*** or any assignee thereof ⁺⁺⁺ with the exception of an event of force majeure as defined on Rider No. 5

+ BRAE and Lessee

or any interest therein or in this Agreement or any Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ~~* ten (10) days after the date~~ any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ~~ten (10) days thereafter~~.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency. ***

(vi) Any action by Lessee to discontinue rail service⁺ on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any event of default, BRAE may, at its option,

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or


(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

9. Termination

At the expiration or termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by

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- * 30 days after written notification that
 ** 30 days after written notification of breach
 *** other than arising out of a default judgement.
 + that would materially effect Utilization


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Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days' free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections ~~5E~~, 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless^{**} from and against (1) any and all claims based upon loss or damage to the Cars, unless occurring while Lessee has physical possession of Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (unless occurring through the fault of Lessee), including without limitation claims with respect to the construction, purchase, delivery to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition (whether defects, if any, are latent or are discoverable by BRAE or Lessee) of the Cars.

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt freight cars.

12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the

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* if available trackage permits

** including, but not limited to, reasonable attorneys' fees.

+ (second sentence of 6E only)

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time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessee agrees to acknowledge, upon receipt, any assignment of this Agreement by BRAE to an owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by ~~BRAE~~ shall constitute a waiver or otherwise affect or impair any right, power or remedy available to ~~BRAE~~ nor shall any waiver or indulgence by ~~BRAE~~ or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

G. No security interest in this Agreement, as chattel paper (as defined in the Uniform Commercial Code), may be created by the transfer of possession of any counterpart hereof other than the original counterpart hereof. The original counterpart hereof shall be marked "Original" and delivered to BRAE and all other counterparts hereof shall be duplicates and shall be marked "Duplicate."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION

BY: 

TITLE: President

DATE: March 13, 1979

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY: 

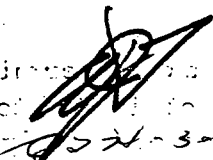
TITLE: President

DATE: March 6, 1979

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* except as otherwise provided in this Agreement,

** BRAE or Lessee


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ORIGINAL

EQUIPMENT SCHEDULE No. 1

BRAE CORPORATION hereby leases the following Cars to Moscow, Camden and San Augustine Railroad pursuant to that certain Lease Agreement dated as of March 6, 1979.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XP	Steel 50', 70 ton Boxcar		50'6"	9'6"	Plate C	10' Single	125

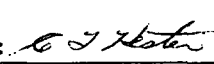
BRAE CORPORATION

BY: 

TITLE: President

DATE: March 13, 1979

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY: 

TITLE: President

DATE: March 6, 1979

ORIGINAL

STATE OF Ohio
COUNTY OF Butler

On this 6th day of March, 1979, before me personally appeared C.T. Hester to me personally known, who being by me duly sworn says that such person is President of M.C.T.S.A. R.R., that the foregoing Lease Agreement, Rider(s) No. 1-5 and Equipment Schedule(s) No. 1-2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

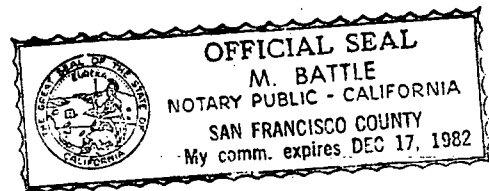
Norma Jane Booker
Notary Public

NORMA JANE BOOKER
Notary Public, Hamilton & Butler Counties, Ohio.
My Commission Expires Feb. 21, 1980

STATE OF California
COUNTY OF San Francisco

On this 13th day of March, 1979, before me personally appeared W.F. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. 1-5 and Equipment Schedule(s) No. 1-2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

M. Battle
Notary Public



ORIGINAL

EQUIPMENT SCHEDULE No. 2

BRAE CORPORATION hereby leases the following Cars to Moscow, Camden and San Augustine Railroad pursuant to that certain Lease Agreement dated as of March 6, 1979.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Steel 50', 70 ton Boxcar		50'6"	9'6"	Plate C	10' Single	125

BRAE CORPORATION

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY: 

BY: 

TITLE: President

TITLE: President

DATE: March 13, 1979

DATE: March 6, 1979

BC-6/78

ORIGINAL

STATE OF Ohio
COUNTY OF Butler

On this 6th day of March, 1979, before me personally appeared C.T. Heston to me personally known, who being by me duly sworn says that such person is President of M.C.T. SA R.R., that the foregoing Lease Agreement, Rider(s) No. 1-5 and Equipment Schedule(s) No. 1-2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Norma Jane Booker
Notary Public

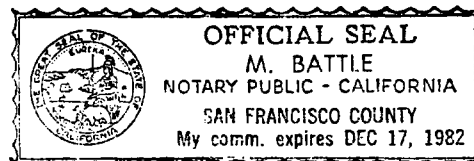
NORMA JANE BOOKER
Notary Public, Hamilton & Butler Counties, Ohio.
My Commission Expires Feb. 21, 1980

NORMA JANE BOOKER
Notary Public, Hamilton & Butler Counties, Ohio.
My Commission Expires Feb. 21, 1980

STATE OF California
COUNTY OF San Francisco

On this 13th day of March, 1979, before me personally appeared W.J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. 1-5 and Equipment Schedule(s) No. 1-2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

M. Battle
Notary Public



ORIGINAL

Rider No. 1 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad and BRAE Corporation.

Section 6 is hereby amended by adding, thereto the following Section 6F, as follows:

6F. BRAE Corporation will file the necessary elections pursuant to Sections 46-48 inclusive of the Internal Revenue Service Code of 1954, as amended, to treat Lessee as Purchaser of the 125 XM Cars for investment tax credit purposes.

BRAE CORPORATION

BY 

TITLE President

DATE March 13, 1979

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY 

TITLE President

DATE March 6, 1979

ORIGINAL

Rider No. 2 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad ("Lessee") and
BRAE Corporation.

Section 7 is hereby amended by adding, thereto, the following
Section 7C, as follows:

7C. In the event that the Ontonagon facility can no longer generate enough shipments to support the 125 XP Cars, or no railroad will accept the assignment of such cars at the Ontonagon facility and the Lessee elects not to exercise its option to make payments as provided in the case of under utilization under paragraph 6C, the Lessee will initiate one or both of the following actions:

- a. The Lessee will reassign the 125 XP Cars (all or part) to another shipper in the United States.
- b. If the Lessee is unable to secure other long term assignments for the 125 XP Cars, it will, if the BRAE Corporation concurs, and to the extent permitted by law, redesignate the 125 XP Cars (all or part) as XM Cars. The Lessee then will receive all car hire revenues on the redesignated Cars over 91.5% Utilization. If at a future date the Lessee is able to secure other long term assignments and desires to re-redesignate the 125 XM Cars (originally XP Cars) to XP Cars (all or part), to the extent permitted by law, the Lessee shall have the option to so re-redesignate all or a part of the Cars and in such event the original financial provisions of this Agreement shall prevail.

BRAE CORPORATION

BY J. A. Kesser

TITLE Vice President - Marketing

DATE April 23, 1979

MOSCOW, CAMDEN AND
SAN AUGUSTINE RAILROAD

BY E. J. Hest

TITLE President

DATE April 23, 1979

ORIGINAL

Rider No. 3 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad and BRAE Corporation.

Section 13 is hereby amended by adding, thereto, the following paragraph
to Section 13A:

BRAE may assign this Agreement, as it relates to one or more Cars, to the owner of such Cars, provided that BRAE or one of its wholly owned subsidiaries enters into a management and remarketing agreement with such owner relating to its Cars upon terms generally similar to those prevailing in the industry. Upon delivery to Lessee of a notice signed by BRAE and such owner regarding such an assignment and the effectiveness of the related management and remarketing agreement, the term "BRAE" when used herein shall mean with respect to such Cars, their owner, BRAE shall be relieved of all of its obligations and liabilities under this agreement relating to such Cars and Lessee shall with respect to such Cars look solely to the owner, of such Cars for the performance of BRAE's obligations hereunder. Lessee hereby agrees that any such assignment may relate to all or part of the Cars to be leased hereunder and all or part of the Cars listed on any schedule. BRAE Corporation warrants that any assignee of the Cars will subject his Cars to all of the terms and conditions of this Lease.

BRAE CORPORATION

BY 

TITLE President

DATE 3-13, 1979

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY E. J. Hester

TITLE President

DATE 3-6-79

ORIGINAL

Rider No. 4 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad and BRAE Corporation.

Section 8 is hereby amended by adding, thereto, the following Section 8C,
as follows:

8C. Upon breach by BRAE of any term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after written notification of such breach is sent to BRAE, Lessee, in addition to all of its other rights at law and equity, may terminate this Agreement. BRAE shall pay all expenses, including but not limited to reasonable attorney's fees, incurred by the Lessee in the exercise of its remedies.

BRAE CORPORATION

BY 

TITLE President

DATE March 13, 1979

MOSCOW, CAMDEN AND
SAN AUGUSTINE RAILROAD

BY 

TITLE President

DATE March 6 1979

ORIGINAL

Rider No. 5 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad and BRAE Corporation.

The term "Force Majeure" means any cause reasonably beyond the control of the Lessee that affects temporarily the Utilization of the Cars including without limitation, strikes, lockouts, labor disputes or other industrial disturbances, other than at the Ontonagon facility of Lessee, acts of God, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, arrests or restraints by government or people, civil disturbances, explosions, interruptions to transportation, embargoes, or orders, acts and ordinances of civil or military authorities.

BRAE CORPORATION

BY 

TITLE President

DATE March 13, 1979

MOSCOW, CAMDEN AND
SAN AUGUSTINE RAILROAD

BY 

TITLE President

DATE March 6, 1979

ORIGINAL

Rider No. 9 to the Lease Agreement dated March 6, 1979
between Moscow, Camden and San Augustine Railroad and BRAE Corporation.

- A. All XM Cars are to be exempt from Car Service Rules 1 and 2, including any Cars initially designated XP and subsequently changed to XM.
- B. The minimum utilization (87.5%) discussed in Section 6C applies to XM and XP Cars separately as two classes, each of which must meet the minimum test.
- C. The first sentence of Rider 2, Section 7C.b. is changed in full, to include these two sentences:

"If the Lessee is unable to secure other long term assignments for the 125 XP Cars, it may, if the owner of the Cars concurs, and to the extent permitted by law, redesignate the 125 XP Cars as XM Cars. In such an instance, all 250 Cars would be accorded equal loading preference to cars owned by others and priority loading over subsequent acquired cars for loading on the Moscow, Camden and San Augustine Railroad."

- D. The future assignment of the 125 XP Cars as described in Rider No. 2 will require prior notice to and approval of the owner if they are not assigned in forest product service. Said approval will not be unreasonably withheld.
- E. In Rider 2, the last part of the first paragraph is changed to "...in addition to its right to make payments under 6C."
- F. In Rider 3, Section 13 should be changed so that wherever the term 'management and remarketing agreement' is used, it is replaced by 'management agreement'.

ORIGINAL

- G. If BRAE exercises its right of assignment as described in Rider No. 3 to the Owner ("Owner") of the Cars, such Owner, upon sale of the Cars may assign the lease to a subsequent owner, as long as BRAE continues to be manager of the Cars. Such reassignment shall relieve the Owner of all of its obligations and liabilities under this Agreement relating to the Cars, and Owner warrants that any future assignee will subject the Cars to and be bound by all of the terms and conditions of the Lease.

BRAE CORPORATION

BY J. A. Resse

TITLE Vice President - Marketing

DATE Apr. 23, 1979

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY E. J. Hahn

TITLE President

DATE April 23, 1979

STATE OF California)

COUNTY OF San Francisco)

On this 7th day of August, 1979, before me personally appeared Sony A. Riessen, to me personally known, who being by me duly sworn says that such person is Vice President of BRAE CORPORATION, that the foregoing Rider No. 9 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Mirella R. Abbo
Notary Public



Rider No. 10 to the Lease Agreement dated March 6, 1979 (the Lease") between Moscow, Camden and San Augustine Railroad and Hillman Coal & Coke Company, as assignee of BRAE Corporation.

- A. The second sentence of Section 7C.b. of the lease, as added by Rider No. 9 to the Lease, is hereby amended to read in its entirety as follows:

"In such event, the Cars so redesignated shall continue to be accorded the loading preference applicable to all Cars leased under this Agreement, as provided in Section 3B hereof."

- B. The first sentence of Section 8C of the Lease, as added by Rider No. 4 to the Lease, is hereby amended to read in its entirety as follows:

"8C. Upon breach by BRAE of any term, covenant, or condition of this Agreement which has the effect of delaying for a period longer than thirty (30) days payments otherwise due Lessee pursuant to the terms of this Agreement or which causes Lessee to lose the right to utilize the Cars for a period longer than thirty (30) days, and which is not cured within thirty (30) days after written notification of such breach is sent to BRAE, Lessee, in addition to all of its other rights at law and equity, may terminate this Agreement."

- C. Riders Nos. 6, 7 and 8 to the Lease are deleted in their entirety.

ORIGINAL

- D. Equipment Schedules Nos. 1 and 2 to the Lease are hereby amended to read in their entirety as provided in the attached Equipment Schedules Nos. 1 and 2, respectively, and all references to Equipment Schedules Nos. 1 and 2 in the Lease and in all riders and schedules thereto shall be to Equipment Schedules Nos. 1 and 2, as so amended, respectively.
- E. Section 4 of the Lease is hereby amended by adding thereto the following Section 4~~E~~

"4~~E~~ Lessee shall during the term of this Agreement furnish to Manufacturers Hanover Leasing Corporation, as the secured party under a financing agreement entered into by the owner of the Cars in connection with the acquisition of the Cars, the following documents (with a copy thereof to the owner of the Cars):

(i) as soon as available but in any event not later than April 30 of each year, a duplicate original of the annual report filed by Lessee with the ICC or any governmental authority succeeding to all or part of the functions thereof;

(ii) during any period when Lessee shall not be required to file annual reports containing its financial statements with the ICC or any successor governmental authority, as soon as available but in any event not later than 120 days after the close of each fiscal year of Lessee, a balance sheet of Lessee at the end of such fiscal year and the related statements of income and of changes in financial position of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout such fiscal year and certified by the principal financial or accounting officer of Lessee; and

(iii) promptly, such additional information which is within the direct control of the Lessee with respect to the Cars or this Agreement as the secured party referred to above may from time to time reasonably request."

Dated: July 25, 1979

HILLMAN COAL & COKE COMPANY

BY Stan N. Wall

TITLE Vice President

DATE 8-7-79

MOSCOW, CAMDEN AND SAN
AUGUSTINE RAILROAD

BY G. J. Hest

TITLE President

DATE 7-25-79

ORIGINAL

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XP	Steel 50', 70 ton Boxcar		50'6"	9'6"	Plate B	10' Single	125

HILLMAN COAL & COKE COMPANY

BY: He N White

TITLE: Vice President

DATE: 8-7-79

BY: *E. J. Jackson*

TITLE: *President*

DATE: 7-25-79

STATE OF Ohio }
COUNTY OF Butler }

On this 25th day of July, 1979, before me personally appeared Carl Hester,
to me personally known, who being by me duly sworn says that such person is President of
Moscow, Camden, & Sam Augustine, that the foregoing Lease Agreement, Rider(s) No. 5, 9 & 10 and Equip-
ment Schedule(s) No. 1 & 2 were signed on behalf of said corporation by authority of its board of
directors, and such person acknowledged that the execution of the foregoing instruments were the
free acts and deeds of such corporation.

Timothy T Slater
Notary Public

TIMOTHY T. SLATER, Attorney at Law
Notary Public - State of Ohio
My Commission has no Expiration date
Section 147.03 R. C.

STATE OF }
COUNTY OF }

On this day of, 197..., before me personally appeared,
to me personally known, who being by me duly sworn says that such person is of
BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. and Equipment
Schedule(s) No. were signed on behalf of said corporation by authority of its board of direc-
tors, and such person acknowledged that the execution of the foregoing instruments were the free
acts and deeds of such corporation.

Notary Public

HILLMAN COAL & COKE COMPANY, as assignee of Brae Corporation, hereby leases the following Cars to Moscow, Camden & San Augustine Railroad pursuant to that certain Lease Agreement dated as of March 6, 1979.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Steel 50', 70 ton Boxcar		50'6"	9'6"	Plate B	10' Single	75
XM	Steel 50', 70 ton Boxcar		50'6"	9'6"	Plate C	10' Single	50

BRAE CORPORATION

HILLMAN COAL & COKE COMPANY

BY: _____

BY: Ste N Hill

TITLE: _____

TITLE: Vice President

DATE: _____

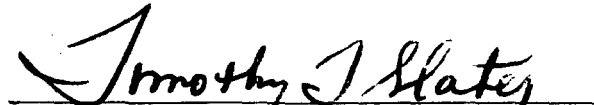
DATE: 8-7-79

MOSCOW, CAMDEN & SAN AUGUSTINE RAILROAD

BY: G. S. HillTITLE: PresidentDATE: 7-25-79

STATE OF OHIO
COUNTY OF BUTLER }

On this 25th day of July, 1979, before me personally appeared Carl Hessler, to me personally known, who being by me duly sworn says that such person is President of Moscow, Camden San Augustin that the foregoing Lease Agreement, Rider(s) No. 1-5, 94/10 and Equipment Schedule(s) No. 142 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.


Notary Public

TIMOTHY T. SLATER, Attorney at Law
Notary Public - State of Ohio
My Commission has no Expiration date
Section 147.03 R. C.

STATE OF
COUNTY OF }

On this day of, 197..., before me personally appeared, to me personally known, who being by me duly sworn says that such person is of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

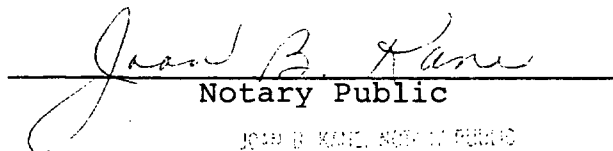
Notary Public

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

On this 14th day of August, 1979, before me personally appeared Steven N. Hutchinson, to me personally known, who being by me duly sworn says that such person is Vice President of Hillman Coal & Coke Company, that the foregoing Lease Agreement, Rider No. 10 and Equipment Schedule Nos. 1 & 2 were signed on behalf of said corporation by authority of its Board of Directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.


Notary Public

JOAN B. KANE, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES SEPT. 27, 1982
Member, Pennsylvania Association of Notaries